railroads in the two cases was such that the effects upon valuation in the one, would furnish no safe guide in determining the effects of the railroad in the instant case upon the value of the lands in question.

SALES—AGENCY OR SALE.—A contract between a fertilizer company and a dealer provided that it would furnish him with fertilizers at specified prices, to be sold at such advance prices as he might elect, such advance to constitute his entire commission and profit. By August 1st, and October 1st of each year the dealer was to make full settlement in cash or notes of purchasers, indorsed by him, and to guarantee the payment of all notes and accounts. He was to hold all fertilizers as the company's property, and to store and insure same at his expense for its account. When the fertilizers were sold, the entire proceeds of the sales, including cash, notes, open accounts and collections were to be turned over to the company until his obligation to it had been settled in full. *Held,* that, when the agreement was fully performed by a complete settlement for the fertilizers received by the dealer, the result would be precisely the same as if there had been a sale, but until that time the relation was that of bailor and bailee or principal and agent. *In Re Handy,* (1915) 218 Fed. 956.

It does not appear clearly from the report, whether or not the dealer was allowed to return all unsold fertilizers. The language of the court is as follows, "By such agreement the parties intend that when it is fully performed the result will be precisely the same as if the goods had been sold by the one to the other, but until that time the original owner of them shall have all the security he would have, had the other party been his sales agent and nothing more." If the agreement was that the dealer could return the unsold fertilizers, then this would be an agency contract, for such a contract signifies that if there is no sale there is no debt. *In Re Smith & Nixon Piano Co.,* 149 Fed. 111; *Ludvich* v. *Am. Woolen Co.,* 231 U. S. 522; *Conable* v. *Lynch,* 45 Iowa 84. If, as the language of the court would seem to indicate, the dealer was to account for all the fertilizers, whether sold or unsold, the holding in the principal case is inconsistent with a long line of authority in this country. Such contracts have been construed by a majority of courts, as conditional sales. *Snelling* v. *Arbuckle Bros.,* 104 Ga. 362; *Herry Ford* v. *Davis,* 102 U. S. 235; *Arbuckle* v. *Gates & Brown,* 95 Va. 802; *Arbuckle Bros.* v. *Kirkpatrick,* 98 Tenn. 221. Some English cases have gone further than this and have held that "if the consignee is at liberty to sell at any price he likes, but is to be bound, if he sells the goods, to pay the consignor at a fixed price and time, then the relation is not that of principal and agent. The alleged agent is, in such a case, making a contract of purchase with his alleged principal." *Ex Parte White,* 6 Ch. App. 397.

SLANDER OF TITLE—MALICE AN ESSENTIAL ELEMENT.—Plaintiff brought an action for damages resulting from a libelous communication sent by defendant company to plaintiff's customers, charging plaintiff with infringing defendant's patent in connection with a certain article sold. *Held,* plaintiff must show, not merely that the article in question was not an infringement, but

that defendant knew that it was not, and that the statement made was false, since, if defendant acted under an honest though mistaken belief, the communication would be privileged. *Wittemann Bros.* v. *Wittemann Co.,* (1915) 151 N. Y. Supp. 813.

The decision is based almost entirely upon the proposition that the occasion in question was qualifiedly privileged, thus necessitating a showing of malice before a recovery on the part of the plaintiff could be permitted. While the cases on this point are not numerous, the principal case seems to be in accord with the weight of authority. The theory is that such communications are privileged because "if defendant, in good faith, believing itself to have an exclusive patent, issued such a notice in good faith, as a warning to dealers against an invasion of its rights, in so doing it would only have discharged a moral obligation, and satisfied the demands of fair dealing." *Wren* v. *Wield,* L. R. 4 Q. B. 213; *Everett Piano Co.* v. *Bent,* 60 Ill. App. 372. *Hovey* v. *Rubber Tip Pencil Co.,* 57 N. Y. 120. The case, however, might have been decided in the same way, in accordance with the well-settled doctrine that in an action for slander of title, plaintiff may recover only when he affirmatively shows that the alleged slanderous statements were uttered maliciously, or with knowledge of their falsity. *John W. Lovell Co. v. Houghton,* 116 N. Y., 520; *Andrew* v. *Deshler,* 45 N. J. Law, 167; *Kendall* v. *Stone,* 5 N. Y. 14.

TORTS—ATTRACTIVE NUISANCES.—Plaintiff brought suit against defendant to recover damages for the value of a Jersey cow. Defendant was engaged in operating an oil mill. It had three tunnels about five feet high, used in conveying cotton seed. There was no fence around the mill. The mouth of the tunnel in question, situated about thirty feet from the highway, was A shaped, and cotton seed and hulls were scattered about the tunnel and in it. Cows were accustomed to come around the oil mill and eat the seed, etc. Plaintiff's cow fell into one of the tunnels and was killed. *Held,* plaintiff could recover, the negligence consisting not in the fact that defendant left its premises unenclosed, but that the same, being covered with cotton seed and hulls, were in such a condition as to prove attractive to cattle, and calculated to lure them into danger. *Buckeye Cotton Oil Co.* v. *Horton,* (Ark., 1915) 173 S. W. 423.

In arriving at a decision in a case of this description, there are two questions to be answered. First, was there any duty on the part of the landowner to enclose against trespassing cattle? Second, if such duty exists, then was defendant negligent? The court in this case attempts to arrive at its decision by answering the latter proposition, without considering the former at all. This is done on the theory that the doctrine of attractive nuisances applies in cases of this description, and therefore the entire proposition rests on the alleged negligence of defendant, without regard to any duty to fence the premises. But this theory is very difficult to sustain. Aside from the state of Arkansas, there is no jurisdiction which has made a similar holding, while several have held to the contrary. *Herold* v. *Meyers,* 20 Iowa 378; *Bush* v. *Brainerd,* 1 Cowing, 78; *Knight* v. *Abert,* 6 Barr (Penn.) 472.